

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**BALJINDER S. BANIPAL DBA
BANIPAL TRANSPORTATION,**

Respondent.

**Docket No. FMCSA-2007-27770¹
(Eastern Service Center)**

ORDER DISMISSING PETITION FOR RECONSIDERATION

1. Background

On January 5, 2006, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA) (Claimant) served a Notice of Claim (NOC) on Baljinder S. Banipal dba Banipal Transportation (Respondent).² The NOC, based on an October 18, 2005 roadside inspection, charged Respondent with one violation of 49 CFR 390.19(a)(2), failing to file a Motor Carrier Identification Report (Form MCS-150) every 24 months, with a proposed civil penalty of \$300; and one violation of 49 CFR 392.9a(a), failing to register or maintain active operating authority as a motor carrier, with a proposed civil penalty of \$1,000.³

¹ The prior case number was NJ-2006-0088-US0170.

² Exhibit 1 to Field Administrator's Opposition to Petition for Reconsideration (hereafter Claimant's Opposition).

³ Although the second page of the NOC incorrectly described the violation as "failing to register or maintain active operating authority," the summary of the applicable statute and statement of charges included with the NOC made it clear that Respondent was correctly charged with engaging in prohibited transportation, not just failing to register or maintain operating authority.

After Respondent failed to respond to the NOC, Claimant served a Notice of Default and Final Agency Order (NDFAO) on February 9, 2006.⁴ The NDFAO advised Respondent that the NOC would become the Final Agency Order in this proceeding effective February 14, 2006, with the civil penalty immediately due and payable on that date.

By letter dated March 15, 2007, Respondent requested reconsideration of the Final Agency Order.⁵ Respondent stated that he had recently received a notice of collection in the amount of \$1,877.45 and sought reconsideration on the ground that the transportation in question was being provided under the operating authority of BK Carrier Corporation, another company owned by Respondent.

In his Response to the Petition served March 27, 2007, Claimant requested that the petition be denied because Respondent defaulted by failing to timely reply to the NOC and did not provide sufficient grounds for vacating the Final Agency Order.

2. Decision

It is undisputed that Respondent did not reply to the NOC on or before February 9, 2006, as required by 49 CFR 386.14(a).⁶ Therefore, Respondent defaulted. Under 49 CFR 386.64(b), a Notice of Default and Final Agency Order issued by a Field

⁴ Exhibit 2 to Claimant's Opposition. Because the deadline for serving a reply to the NOC was February 9, 2006 (see footnote 6, *infra*), the NDFAO should have been served no sooner than February 10, 2006. However, the premature issuance of the NDFAO was harmless error under the circumstances of this case.

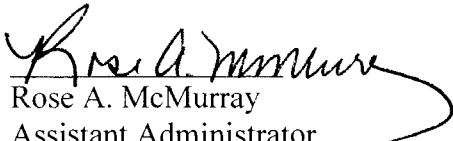
⁵ Exhibit 3 to Claimant's Opposition. This letter was sent to FMCSA's New Jersey Administrator and not served on the Assistant Administrator in accordance with 49 CFR 386.7.

⁶ This date was calculated by adding 30 days to the January 5, 2006 service date of the NOC, in accordance with § 386.14(a), and an additional five days because the NOC was served by mail. See 49 CFR 386.8(c)(3).

Administrator based on failure to timely reply to the NOC may be vacated if Respondent can demonstrate, in a *timely filed* Petition for Reconsideration, excusable neglect, a meritorious defense, or due diligence in seeking relief.

Because the Petition for Reconsideration in this case was not timely filed, it is not necessary to determine whether Respondent presented sufficient grounds for vacating the Final Agency Order. Under 49 CFR 386.64(a), a petition for reconsideration must be submitted within 20 days following service of the Final Agency Order. Respondent missed this deadline by more than a year, after collection proceedings had already been initiated. Accordingly, the petition is dismissed as untimely filed.

It Is So Ordered.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5-5-10
Date

CERTIFICATE OF SERVICE

This is to certify that on this 5 day of May, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Baljinder S. Banipal
Banipal Transportation
P.O. Box 270
108 Winchester Drive
East Windsor, NJ 08520

One Copy
U.S. Mail

Anthony G. Lardieri, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

One Copy
U.S. Mail

Loretta Bitner, Acting Field Administrator
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

One Copy
U.S. Mail

Christopher Rotondo
New Jersey Division Administrator
Federal Motor Carrier Safety Administration
One Independence Way, Suite 120
Princeton, NJ 08540

One Copy
U.S. Mail

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE
Room W12-140
Washington, DC 20590

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